WONG PA HOCK

v.

AMERICAN INTERNATIONAL ASSURANCE CO LTD & ANOR

HIGH COURT SABAH & SARAWAK, SIBU
CLEMENT SKINNER J
[SUIT NO: 64-1993]
30 JUNE 2001

CONTRACT: *Agency - Termination - Agent not given reasons for termination - Agent not given opportunity of being heard - Whether termination lawful - Whether rules of natural justice apply - Whether court should interpose rules of natural justice into contract - Whether ss. 158 & 159 Contracts Act 1950 apply - Whether principal and agent free to contract out of ss. 158 & 159 Contracts Act 1950*

AGENCY: *Termination - Revocation by principal - Agent not given reasons for termination - Agent not given opportunity of being heard - Whether termination lawful - Whether court should interpose rules of natural justice into agency contract - Whether ss. 158 & 159 Contracts Act 1950 apply only to agency contracts for a fixed period - Whether principal and agent free to contract away safeguards provided by ss. 158 & 159 Contracts Act 1950*

The plaintiff entered into an 'agency contract' with the 1st defendant (the American International Assurance Company Ltd) in 1988 and was authorised to procure and transmit various applications for insurance to the 1st defendant and also to collect and pay over premiums to the 1st defendant. Clause 24(b) of the said contract provided that the "… agreement may be terminated without giving any reason therefor … by either party upon 15 days' notice in writing …". In 1991 the 1st defendant terminated the contract pursuant to cl. 24(b). Dissatisfied, the plaintiff sued the 1st defendant for wrongful termination. The sole issue for determination was in the form of the following preliminary question formulated by both parties: whether in the circumstances of this case – where the parties thereto had already stated that the right to terminate the contract was contractual in nature and governed by cl. 24(b) of the contract – the plaintiff was still entitled to the rules of natural justice of being given the reasons for the termination and an opportunity to be heard?

Held:

[1] The agreement between the plaintiff and the 1st defendant was a contract of agency and cl. 24(b) thereof clearly gave either party the unilateral right to terminate the contract upon 15 days' notice in writing without the need to assign any reasons therefor. In entering into the contract the parties had obviously addressed their minds to the question of how their relationship could be brought to an end and this had found expression in the unequivocal words of cl. 24(b). Hence it would not be right for the court, in the face of cl. 24(b) of the agency contract, to interpose on the parties the procedural safeguards that the plaintiff alone sought to invoke. The court must not rewrite the contract or audit the bargain between the parties but should instead hold them to the contract they had made for themselves by giving effect to the clear and unequivocal words of cl. 24(b). The instant case was not about the dismissal of an employee by an employer but the termination of a contract of agency between a principal and its agent. (pp 271 e, 272 c-g, 273 a, 274 i, 275 f & 280 d)

[2a] Sections 158 and 159 of the Contracts Act 1950 ('the Act') apply only in respect of agency contracts for a fixed period. The contract of agency between the plaintiff and the 1st defendant herein was not one which "continued for any period of time", ie, it was not an agency contract for a fixed period. Consequently, ss. 158 and 159 of the Act were inapplicable and of no help to the plaintiff. (pp 276 h & 277 a, f-g)

[2b] The parties to an agreement may contract out of ss. 158 and 159 of the Act. If the freedom to contract on matters covered by ss. 158 and 159 of the Act was to be curtailed, the prohibition would have been expressed in the Act. Hence, the plaintiff and the 1st defendant were at liberty to express their contractual intentions in respect of unilateral termination without reasons in the form of cl. 24(b) of the agency contract. (pp 278 d-e, f-g, 279 h & 280 a-c)

[Preliminary issue decided in 1st defendant's favour; plaintiff's action dismissed.]

Case(s) referred to:

Hj Ariffin v. Government of Pahang [1969] 1 MLJ 6 ***(refd)***
Johnson v. Moreton [1978] 3 All ER 37 ***(refd)***
Koh Yen Bee v. American International Assurance Co Ltd [2000] 3 CLJ 28 ***(not foll)***
Ooi Boon Leong & Ors v. Citibank NA [1984] 1 MLJ 223 ***(refd)***
Sarawak Electricity Supply Corporation v. Wang Teck Chai [1975] 2 MLJ 144 ***(refd)***
Wood v. Woad [1874] LR 9 Exch 190 ***(refd)***

Legislation referred to:
Contracts Act 1950, ss. 1(2), 86, 92, 94, 155, 158, 159, 183
Sarawak Electricity Supply Corporation Ordinance 1962, s. 30(1)

Other source(s) referred to:
Cheshire, Fifoot and Furmston's Law of Contract, Singapore and Malayia edn, p 714
De Smith's Judicial Review of Administrative Action, 4th edn, p 195
Halsbury's Laws of England, 4th edn, vol 1(1), para 94
Halsbury's Laws of England, 4th edn, vol 9, paras 269, 316
Sanjiva Row's Contract Act and the Law Relating Tenders, 9th edn, vol 3, pp 2643, 2657

For the plaintiff - David Kuok; M/s Wong, Orlando Chua & Co
For the 1st defendant - Dr Chew Peng Hui; M/s Battenberg & Talma Advoc
For the 2nd defendant - Hii Hieng Sing; M/s Hii & Co

Reported by Gan Peng Chiang

JUDGMENT

Clement Skinner J:
This judgment is delivered in respect of a preliminary issue which the parties to this action formulated and submitted for decision. The agreed facts and the issue arising therefrom are these.

Under an agency contract dated 23 March 1988 and entered into between the plaintiff of the one part and the first defendant of the other part (hereinafter called "the contract") the plaintiff was authorised by the first defendant to procure and transmit to the first defendant applications for all forms of life insurance and annuities, group insurance, personal accident insurance and annuities within the territories wherein the first defendant has the right to do business and to collect and pay over to the first defendant, first year premium and such other business subject to the terms and conditions of the contract. The second defendant was not a party to the contract.

Under cl. 24 of the contract it was provided as follows:

> Subject to sooner termination of this Agreement by the Company in accordance with Clause 25(b) hereof this Agreement may be terminated without giving any reason therefor:
>
> (a) by the withdrawal of the Company from the territory in which the Agent is operating;
>
> (b) by either party upon 15 days' notice in writing;
>
> (c) by the death of the Agent.

By a letter dated 21 November 1991 and in pursuance of cl. 24(b) of the contract, the first defendant gave the plaintiff fifteen (15) days' notice with effect from 21 November 1991 to terminate the contract.

On those facts, the parties have agreed to submit as a preliminary issue for determination of this court the following questions:

> Whether in the circumstances of this case where the parties thereto have already stated the right to terminate the contract was contractual in nature and governed by clause 24(b) of the said contract, is the plaintiff still entitled to the Rule of Natural Justice of being given the reasons for the termination of the contract and the opportunity to be heard?

The parties have further agreed that if the court finds that the "Rule of Natural Justice to be given reasons for termination and the right to be heard" applies notwithstanding cl. 24(b) of the contract, then the trial shall proceed to determine whether there was such a breach of "Natural Justice" in the manner in which the first defendant had terminated the contract.

If, on the other hand, the court finds the "Rule of Natural Justice to be given reasons for termination and the right to be heard" has no application in view of cl. 24(b) of the contract then the plaintiff's case be dismissed with costs to be taxed if not agreed.

It is the plaintiff's case that it would be unjust to allow the first defendant to terminate the plaintiff's services without giving any reasons and affording him the opportunity of being heard before the contract was terminated, simply by relying on cl. 24(b) of the contract. The plaintiff relies upon the rules of natural justice and in particular *audi alteram partem*, as affording him the right to be given reasons and a right to be heard. It is the submission of counsel for the plaintiff that the scope of the rule of natural justice has no limit and has been refined and adapted to govern the proceedings of bodies other than judicial tribunals; and a duty to act in conformity with the rule has been imposed by the common law on administrative bodies not required by statute or contract to conduct themselves in a manner analogous to a court (see, *Halsbury's Laws of England* 4th edn., vol. 1(1) para. 94). Counsel also referred to the case of *Wood v. Woad* [1874] LR 9 Exch. 190 where it was held that the circumstances in which the rule will apply cannot be exhaustively defined, but they embrace a wide range of situations in which acts or decisions have civil consequences for individuals by directly affecting their legitimate interests and expectations.

The plaintiff also relies upon the decision in the case of *Koh Yen Bee v. American International Assurance Company Ltd.* [2000] 3 CLJ 28, where the court, in considering a clause in a contract in identical terms to cl. 24(b) of our contract, held that the rules of natural justice applied. Counsel for the

plaintiff urged me to follow the decision in that case which also held that a clause such as cl. 24(b) of our contract was void as it was an attempt to contract out of the provisions of ss. 158 and 159 of the Contracts Act 1950.

The defendants take the position that the rules of natural justice can have no application in a case such as this which does not give rise to issues of public law but one in which the parties as business persons have contracted on the clear basis that either of them should be able unilaterally to terminate the agreement without the need to state any reasons or to hear the other party first. It is the defendants' case that the terms of the contract must prevail and the court should give expression to the clear words of the contract entered into.

The plaintiff complains that the contract has been unjustly terminated and that injustice has arisen because the first defendant has not given him any reasons for the termination nor afforded him an opportunity to be heard before his agency was terminated. While I accept the general principles relating to the rules of natural justice and the varied circumstances in which they have been applied, whether in a particular instance the rules will apply must be decided on its own particular facts and in this case, the parties have already agreed to what they are. I have earlier stated them. The context, therefore, in which the plaintiff seeks to avail himself to the rules of natural justice is a contractual one. To be precise, a contract of agency of which cl. 24(b) gives either party the unilateral right to terminate the contract upon 15 days' notice in writing without the need to assign any reasons therefor.

In *Cheshire, Fifoot and Furmston's Law of Contract,* Singapore and Malaysian Edition at p. 714, the learned author discusses the relationship between a principal and agent and the manner in which the relationship can be terminated and says:

> If the result of their agreement is to create an immediate and continuing nexus between them, as for example where the agent has promised to devote his time and energy on behalf of the principal in return for reward, their relationship bears a close analogy to that between an employer and employee. The agent has agreed to serve the principal; the principal has agreed to accept and to pay for that service. It is clear, therefore, that any unilateral termination of the relationship by either party will be wrongful **unless it is in accordance with the contract. If there is an express term dealing with the matter, *cadit quaestio***. If not, all depends upon the construction of the contract (emphasis mine).

Sanjiva Row's Contract Act and the Law Relating to Tenders etc. 9th edn vol. 3 p. 2643 contains a passage in a similar vein, where the termination of an agent bound by contract is discussed. It states:

> If an immediate contractual relationship has been established between the parties, as where the agent has promised to do something for the principal on a certain remuneration, the relationship between them is analogous to that between employer and employee ... A unilateral termination of the agency, in such a case, will be wrongful, unless it is in accordance with the contract. If there is an express term dealing with the matter, the same governs the rights and obligations of the parties; but if there is not, the matter has to be decided upon the construction of the contract.

Reverting to the agreed facts of this case, in entering into the contract in question, the plaintiff and the first defendant had very obviously addressed their minds to the question of how their relationship could be brought to an end and this has found expression in the clear and unequivocal words of cl. 24(b). Can it then be said by the plaintiff that the first defendant's decision to exercise its rights in accordance with the terms of the contract is unjust because in exercising its contractual right, the first defendant has not given him the reasons for doing so or an opportunity to be heard? That question must, in my opinion, be answered in the negative. This is not a case of dismissal of an employee. It is of termination of a contract of agency. As I had said earlier, the parties had addressed their minds to the question of termination and if it had been intended that reasons would need to be given or that there should be procedural safeguards for termination, they would have expressed cl. 24(b) differently.

I do not think it is permissible for the court in the face of the clear and unequivocal words of cl. 24(b) to interpose on the parties the procedural safeguards that the plaintiff now seeks to invoke. To do so would amount to the court rewriting the contract for the parties. In my judgment, the court should decline to do so and instead hold the parties to the contract they have made for themselves by giving effect to the clear terms of cl. 24(b). In this regard I would refer to *Halsbury's Laws of England*, 4th edn. vol. 9 para. 269 which has this to say in relation to commercial agreements:

> Although the courts will not make a contract for the parties where none exists, they will seek to uphold bargains made between businessmen wherever possible ...

Counsel for the plaintiff has submitted that the plaintiff is not a businessman – he is an agent. Yes, but in a commercial context. His introduction of clients to the first defendant were with a view to earn for himself a profit in the form of commission, from his industry.

Even though counsel for the plaintiff has said that the plaintiff is not a businessman and that the relationship between the plaintiff and defendant is more analogous to that between employer and employee (as indicated in the passage I had earlier referred to at p. 2643 of *Sanjiva Row's Contracts Act*

and the Law Relating to Tenders etc.), I should point out that in that passage referred to, it is made very clear that even if that analogy can be drawn, a unilateral termination of the agency will not be wrongful if it is done in accordance with the express terms of the contract dealing with the matter. That is precisely the position that presents itself before me.

I also do not find helpful, the plaintiff's attempt to draw an analogy of the relationship between the plaintiff and the first defendant as being akin to that between employer and employee because cl. 29 of the contract expressly states that nothing contained herein shall be construed to create the relationship of employer and employee whether expressly or impliedly between the company and the agent.

I should also point out that counsel for the first defendant has referred me to two cases where the court has refused, in a contractual situation, to apply the rules of natural justice where the employer had unilaterally terminated the services of the employee in accordance with the terms of the contract.

The first is the case of *Haji Ariffin v. Government of Pahang* [1969] 1 MLJ 6. In that case the appellant was a Kathi in the service of the State of Pahang. His contract of service stipulated that his engagement could be terminated on one month's notice or on payment of one month's salary plus cost of living allowances *in lieu* of notice on either side. He got into difficulties with his department over a difference of opinion concerning the tithe on buffaloes. His services were terminated by giving him three months' notice. The appellant an brought action claiming he had been unlawfully dismissed and that he had not been given an opportunity to meet any charges brought against himself and accordingly his dismissal was in breach of the rules of natural justice. The High Court in dismissing his claim held that this was not a case of dismissal but of termination in accordance with his contract of service. This is what Raja Azlan Shah J (as His Highness then was) said at p. 10:

> ... Under his contract of service he had a right to the post in question subject to the express term that his appointment would be terminable at one month's notice on either side. It is true that the motive which had influenced the Government to terminate his service stemmed from the apparent conflict of opinion between he and his department concerning the tithe on buffaloes, but as the power to exercise that right flowed from an express term of the contract, in view of the decided authorities the termination was not a punishment so as to amount to a dismissal.

On appeal, the Federal Court upheld the decision of the High Court and in doing so, this is what Suffian FJ said at p. 17:

> ... While it is true that the Kathi whose service is terminated under such a contract has lost a steady job, the termination does not involve a penalty or punishment so as to make it a dismissal within the meaning of article 135(2) of the Constitution and it is not, therefore, necessary first to give him a reasonable opportunity of being heard.

The plaintiff's case here has not been argued on the basis that the termination of the contract involved a penalty or punishment.

The second case is that of *Sarawak Electricity Supply Corporation v. Wang Teck Chai* [1975] 2 MLJ 144. The respondent in that case had been employed by the Sarawak Electricity Supply Company Limited, which was later converted into a statutory corporation by the Sarawak Electricity Supply Corporation Ordinance 1962, s. 30(1) of which provided that every officer on the establishment of the company would be deemed to be transferred to the Corporation. Subsection (2) of s. 30 reserved to the Corporation the right to terminate the services of all those transferred to the Corporation, to the same extent as the company could have done. Section 49 of the Standing Orders of the Corporation which governed the contractual relations between the parties stipulated that the services of an employee could be determined by one full calendar month's notice at any time without cause assigned unless his conditions of service provided otherwise. The respondent became active in union activities. The respondent was then offered a post as finance clerk and while in that position shortage of cash was discovered. Disciplinary action was taken against him and he was reverted to general clerk. A short while later, his services were terminated by one month's notice. The respondent brought an action for wrongful termination and dismissal. Before the learned judge, the respondent argued that he had been wrongfully dismissed in contravention of the rules of natural justice. The learned judge held for the respondent. On appeal, the Federal Court held that the learned judge had fallen into error for thinking that under Standing Order 49, the Corporation had the right to terminate but only on grounds of, *inter alia*, gross misconduct and inefficiency when in fact under the Standing Order no such grounds or reasons needed to be given to the respondent.

Counsel for the plaintiff has submitted that *Haji Ariffin*'s case and the *Sarawak Electricity Supply Corporation*'s case are distinguishable on their facts from our case because those two cases deal with termination of a servant by his master whereas our case concerns the revocation or renunciation of an agent's authority. Further, according to counsel, the provisions of ss. 158 and 159 of the Contracts Act 1950 were not considered by the court in those cases. While I agree that the facts of those two cases are different, as they must, from ours; yet, the decisions in both cases show that even in the face of a very strong claim to the application of the rules of natural justice in an employer employee situation, the court gave effect to the terms and conditions of their contract of employment and not to the rules of natural justice.

It is also evident to me from the authorities that I have been referred to that the rule of *audi alteram partem* is usually applied in situations where a process of "adjudication" is involved. Thus, *de Smith's Judicial Review of Administrative Action* 4th edn. states at p. 195:

> The rule sets minimum standards of fairness in "adjudication" by bodies which in many cases bear no resemblance to courts stricto sensu.

Counsel for the plaintiff has submitted that by terminating the contract without giving the plaintiff a right to be heard, the first defendant has unlawfully deprived him of his legitimate interests and expectations and the first defendant stands to gain financial profit at the expense of the plaintiff because the plaintiff had lost all his commission and benefits under the contract. According to counsel for the plaintiff, in this way, the first defendant had "adjudicated" on the rights and expectations of the plaintiff without having accorded him the right to be heard. I regret I cannot agree with this submission. In the first place, I do not think that when the first defendant decided to exercise its contractual right under cl. 24(b) the exercise of that right involved the first defendant entering upon an adjudication of the plaintiff's entitlement to commission and benefits under the contract. The loss of the plaintiff's rights and benefits has resulted as a consequence of the exercise of a power to terminate the contract and not because the first defendant had "adjudicated" on such rights. In the second place, what legitimate interests and expectations the plaintiff may have had to his commission and benefits must surely be subject to what is stated in the contract and he would have been well aware that his rights to commission and benefits would cease upon his agency being terminated. And the terms upon which the contract could be terminated was certainly a matter to which both parties had put their minds to and addressed and cl. 24(b) clearly dispenses with any reasons having to be given. Harsh as it may seem, this is the bargain that the parties had made for themselves and the court will not audit the bargain made between the parties (see, *Halsbury's Laws of England*, vol. 9, para. 316).

I now turn to consider the contention of the plaintiff that cl. 24(b) of the contract is unenforceable and void as it is inconsistent with ss. 158 and 159 of the Contracts Act 1950 ("the Act"). It will be convenient to set out these two sections here first:

> S. 158. Where there is an express or implied contract that the agency should be continued for any period of time, the principal must make compensation to the agent, or the agent to the principal, as the case may be, for any previous revocation or renunciation of the agency without sufficient cause.
>
> S. 159. Reasonable notice must be given of such revocation or renunciation; otherwise the damage thereby resulting to the principal or the agent, as the case may be, must be made good to the one by the other.

It is said by the plaintiff that cl. 24(b) is inconsistent with the provisions of ss. 158 and 159 of the Act because s. 158 states that a contract of agency "for any period of time" cannot be terminated without sufficient cause, and, s. 159 states that where such a contract is terminated, reasonable notice must be given. According to counsel for the plaintiff, since cl. 24(b) allows either party to the contract to terminate the same without having to give any reasons, it is inconsistent with ss. 158 and 159 and, therefore, constitutes an attempt by the parties to contract out of the provisions of the Act and is to that extent void. It is the contention of counsel for the plaintiff that the provisions of ss. 158 and 159 cannot be contracted out of because they are not prefaced by qualifying words such as "in the absence of an express contract" which are found in s. 155 of the Act, or the words "in the absence of any contract to that effect" which are found in s. 183 of the Act which, according to counsel for the plaintiff, indicate an intention on the part of Parliament to allow those sections of the Act in which such words appear to be contracted out of.

I should point out here that all the arguments advanced by counsel for the plaintiff on ss. 158 and 159 of the Act are based on the reasoning and decision on the point in the case of *Koh Yen Bee v. American International Assurance Company Ltd. (supra).* In that case, it was held that a cl. 26(b), which is identical to cl. 24(b) here, was void as being inconsistent with ss. 158 and 159 of the Act for the reasons relied upon by counsel for the plaintiff.

Counsel for the first defendant does not see the provisions of ss. 158 and 159 of the Act in quite the same light as the plaintiff. He submitted that the two sections have no application to the facts of this case because they apply only to contracts for a fixed period of time, which our contract is not. Counsel for the first defendant further submitted that even if they are, they may be contracted out of.

The submissions of counsel give rise to two points: (a) do the provisions of ss. 158 and 159 of the Act apply to our contract, and (b) if so, are they to be regarded as sections which cannot be contracted out of?

The answer to the first point will depend upon whether the contract entered into between the plaintiff and the first defendant is to continue "for any period of time" because a reading of s. 158 shows that only contracts of that nature are covered by the section. In my judgment, the words "for any period of time" must refer to a contract for a fixed period of time because if that is not so, there cannot be "any revocation or renunciation of the agency." I find support for my interpretation in *Sanjiva Row's Contracts Act and the law relating to Tenders etc.* 9th edn. p. 2657 at which is found a synopsis of s. 205 of the Indian Contracts Act which is *pari materia* with s. 158 of our Act. The commentary states:

> The section provides that where an agency for a **fixed period**, whether the period is fixed by express agreement or by implication, is terminated, the party responsible for the termination must compensate the other party. (emphasis mine).

So, was the contract here for a fixed period of time? According to the first defendant, it was most definitely not. But according to counsel for the plaintiff "there is a prescribed period of time for the validity of the agent's contract". According to him, cl. 1 of the contract says that it shall be valid and binding on the first defendant for so long as the agent's schedule of commission shall continue to subsist until terminated. In other words, according to counsel for the plaintiff, the contract shall continue until all the commissions under the agent's schedule of commission have been fully paid to the plaintiff, and as an example, commissions on a life insurance and endowment is six years.

I regret I am unable to agree with this contention of the plaintiff. Clause 1 of the contract reads:

> Subject to the Company's rights to terminate this Agreement as set out hereunder, this Agreement shall only be deemed to be valid and binding upon the Company for so long as the Agent's Schedule of Commissions shall continue to subsist and after any revocation of such Schedule by the Company there shall be no holding over of any of the Terms or Conditions of this Agreement save and except that the Company shall be entitled to enforce any such Terms and Conditions by reason of any breach on the part of the Agent.

I regret I am unable to discern from cl. 1 any fixed period during which the contract is to continue for. It is deemed to be valid and binding on the first defendant so long as the agent's schedule of commission shall continue to subsist but that does not mean that it is for a fixed period. In fact, it indicates just the opposite. It fixes no period and is to continue as long as the agent's schedule of commission subsists and that is an uncertain event because that schedule may go on indefinitely or be terminated in accordance with the contract. In my judgment, the contract not being for a fixed period, the provisions of ss. 158 and 159 of the Act have no application here. In case I am wrong in what I say above, I go on to consider the second point.

Can ss. 158 and 159 of the Act be contracted out of? Counsel for the plaintiff has submitted that they are protective legislation but has not said why. He has, however, referred to the following passage in the speech of Lord Hailsham in *Johnson v. Moreton* [1978] 3 All ER 37 at p. 49:

> ... The policy of the law has been repeatedly used to protect the weaker of two parties who do not contract from bargaining positions of equal strength.

> ... The truth is that it can no longer be treated as axiomatic that, in the absence of explicit language, the courts will permit contracting out of the provisions of an Act of Parliament where that Act, though silent as to the possibility of contracting out, nevertheless is manifestly passed for the protection of a class of persons who do not negotiate from a position of equal strength, but in whose well-being there is a public as well as a private interest.

As counsel for the first defendant has correctly pointed out, a reading of that case shows that that is a case concerning the provisions of the Agricultural Holdings Act 1948 which was characterised by the law Lords as a piece of legislation enacted in the national and public interest as well as for those concerned in agriculture to encourage efficient farming and good husbandry by conferring security of tenure on tenant farmers as such farmers, because of their inequality of bargaining power, required statutory protection in the making of contracts for the leasing of land.

It does not take very much to see that what Lord Hailsham was alluding to in that case can have no application to the agreed facts upon which this issue is tried. Further, I agree with the submission of counsel for the first defendant that where Parliament intends to interfere with the freedom to contract or to protect parties to a contract, it has enacted specific legislation for that purpose, of which, the Hire-Purchase Act is a good example. I should also say that there is absolutely no evidence before me from which it can be concluded that ss. 158 and 159 were enacted to protect insurance agents such as the plaintiff.

With reference to the specific submission of counsel for the plaintiff that ss. 158 and 159 cannot be contracted out of because they are not prefaced by the words "in the absence of any contract to that effect" or "in the absence of an express contract" or like words, I regret that I do not agree with this contention. It has been authoritatively decided that if Parliament had intended to restrict or curtail the freedom to contract on a particular subject matter, the prohibition would be expressed in the statute and not left by the legislature to be picked out by implication based upon sections dealing with different subject matters. That was decided by the Privy Council in *Ooi Boon Leong & Ors. v. Citibank N.A.* [1984] 1 MLJ 223. In that case the principal question for decision by the Board was whether the terms of the Contracts Act 1950 are such that parties to a guarantee cannot contract out of ss. 86, 92 and 94 of the Act. The facts were that the appellants had signed a guarantee, cls. 7, 8 and 16 of which sought to protect the bank in whose favour the guarantee was granted against the matter stated in ss. 86, 92 and 94 of the Act. It was argued by the appellants that because of the words found in s. 1(2) of the Act, it rendered void any terms of a contract which was inconsistent with the Act and cls. 7, 8 and 16 of the guarantee being inconsistent with ss. 86, 92

and 94 of the Act, they were void. The second line of arguments presented by the appellants in that case are similar to what has been raised by the plaintiff here. In that case the appellants argued that based on a comparison between the form of words in ss. 86, 92 and 94 of the Act and the form of words in certain other sections which used words like "in the absence of express agreement to the contrary", this showed that where the Act intended contracting out to be permissible, it says so. Since ss. 86, 92 and 94 did not have similar words, it was argued that they could not be contracted out of and therefore cls. 7, 8 and 16 of the guarantee were void, thereby discharging the appellants of any liability thereunder. The Privy Council rejected both arguments. This is what Lord Brightman who spoke for the Board said at p. 224:

> The Contracts Act 1950 is described in the long title simply as "An Act relating to contracts". It is not expressed to be a consolidating or amending statute. It is, however, clearly intended to codify the law of contract as regards those aspects of contract law which are grouped under the Act's nine definitive headings. It is modelled on the Indian Contracts Act 1872, many of the sections being in identical language.

And at p. 225:

> Their Lordships reject the argument based on section 1(2) ...
>
> All that section 1(2) of the Contracts Act is saying is that the legal consequences of a contract which ensue at common law are to continue to apply unless some different legal consequences are spelt out by the Act. The sub-section does not say that the contracting parties are unable by agreement to vary the legal consequences spelt out by the Act. Section 1(2) has no effect on the freedom of contracting parties to decide upon what terms they desire to contract. It would indeed be surprising if so devastating an inroad into the common law right of freedom of contract were introduced by the legislature in a section which is primarily devoted to expressing the short title to the Act ...
>
> The argument founded on a comparison between (i) sections 86, 92 and 94 and (ii) certain other sections of the Act which are expressed to be "subject to a contrary intention" or the like also fails. Random recognition in certain sections of the Act of the fundamental principle that contracting parties are at liberty to express their intention in their contracts as they please is quite insufficient to support the contrary proposition that the absence of such recognition in another section implies the absence of freedom to contract. If freedom to contract is to be curtailed in relation to a particular subject matter, their Lordships would expect the prohibition to be expressed in the statute, and not left by the legislature to be picked up by the reader as an implication based upon sections dealing with different subject matters. Furthermore, it may be noticed that when the Contracts Act intends to render an agreement void, it says so in express terms; see sections 25 to 31 under the cross-heading "Void Agreements", read with the definitions in section 2(e) and (g).

Although the Board was there dealing with the terms of a guarantee, I see no reason why the reasoning and the principles stated there cannot apply to an agency contract. Applying what was stated there to the facts of our case, I must say, with respect, that it has been shown that the submission of counsel for the plaintiff that because ss. 158 and 159 did not contain qualifying words like "subject to a contrary intention" or "in the absence of express contract", this indicated that they cannot be contracted out of, is unsustainable. If freedom to contract on the matters covered by ss. 158 and 159 was to be curtailed, the prohibition would have been expressed in the Act. It has not been and therefore the parties were at liberty to express their intention in the contract regarding unilateral termination of the contract without having to give any reasons, which they have done in cl. 24(b). The clause is clearly not inconsistent with ss. 158 and 159 and neither is it unenforceable or void.

For the reasons given above, I must with the utmost respect decline to follow the decision in *Koh Yen Bee v. American International Assurance Company Limited.* The facts of that case are completely different from those here and the other reasons given by the learned judge in that case for deciding against the defendant there are not relevant here.

In the result, I would answer the question posed in the preliminary issue by saying that in the circumstances of this case where the parties thereto have already stated the right to terminate the contract was contractual in nature and governed by cl. 24(b) of the said contract, the plaintiff is not entitled to the rules of natural justice of being given the reasons for the termination of the contract and an opportunity to be heard.

I accordingly dismiss the plaintiff's claim with costs to be taxed if not agreed to.